

First Amendment Right of Freedom of Speech

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November 1, 2006

## Introduction

The First Amendment has guaranteed certain civil liberties, such as freedom of speech, which *freedom* can be seen and heard on a daily basis. Freedom of speech is important because it allows people the right to state their beliefs without fear of recrimination from the government. The ability to voice your opinion, even if it is unpopular is a form of free speech that many people enjoy. Also, the right to express your self symbolically is another form of free speech, *speech can be actions also*. Although the First Amendment gives us the right of free speech, there are some limitations placed upon that right. When speech is obscene, presents a danger to others, or attempts to overthrow the government, restrictions can be placed on speech. *Good thesis*

## Sedition

Freedom of speech tolerates most speech unless it poses a danger *even then it must be an immediate threat* to the government.

Sedition is a form of speech that is not tolerated or guaranteed by the First Amendment.

"Sedition is the crime of attempting to overthrow the government by force, or to disrupt its lawful activities by violent acts. Seditious speech is speech that urges such conduct"

(G. Thomson, personal communication, October 26, 2006). *Most sedition is tolerated, only if there is immediate / eminent threat*

There have been three major laws passed by Congress to prevent sedition and seditious speech. The first law passed was the Alien and Sedition Acts of 1798. The Supreme Court never ruled on the Alien and Sedition Acts of 1798. The second law passed was the Sedition Act of 1917. The Sedition Act of 1917 made it a crime to encourage disloyalty or spread anti-government ideas during a time of crisis (G.

Thomson, personal communication, October 26, 2006). A famous case involving the Sedition Act of 1917 is the U.S. Supreme Court case *Schenck v. U.S.*, 249 U.S. 47 (1919). Charles Schenck was a member of the Socialist Party and had distributed leaflets stating "conscription was despotism in its worst form and a monstrous wrong against humanity" (*Schenck v. U.S.*, 249 U.S. 47 (1919)).

*What was the general consensus of the Court in these cases?*

Charles Schenck was charged with a "conspiracy to violate the Espionage Act of 1917, by causing and attempting to cause insubordination in the military and to obstruct the recruiting and enlistment service of the U.S. when the U.S. was at war" (*Schenck*, 1919). The Supreme Court upheld the conviction of Schenck and Justice Holmes delivered the opinion of the Court

But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace is such a hindrance to its effort that their utterance will not be endured so long as men fight.

Justice Holmes introduced the "clear and present danger" test that was used in future cases to decide the legality of placing restrictions of freedom of speech.

According to the Associated Press, a present day example of the charge sedition deals with a nurse in New Mexico who exercised her First Amendment right of free speech.

"Laura Berg, a nurse at a U.S. Department of Veterans Affairs hospital was investigated in September 2005 for sedition after writing a letter criticizing the government"

(Associated Press, February 8, 2006). Mrs. Berg urged people to act forcefully and remove an administration that played games of vicious deceit. Mrs. Berg criticized

President Bush on his handling of the Iraq War and Hurricane Katrina. Mrs. Berg was ultimately cleared of any wrongdoing (AP, 2006).

The third law passed by Congress aimed at preventing sedition and seditious speech is the Smith Act of 1940. The Smith Act of 1940 forbade advocating violent overthrow of the government, and belonging knowingly to any group that does (G. Thomson, personal communication, October 26, 2006). The Smith Act was aimed at Communist leaders. "The constitutionality of the Act was questioned in the case *Dennis v. U.S.* 341 U.S. 494 (1951) when Chief Justice Vinson relied on Justice Holmes "clear and present danger" test when he said the government did not have to wait until the putsch is about to be executed" (Wikipedia encyclopedia).

The Government can't regulate the expression of rebellion; they can only regulate the action. It is okay to voice your disagreement with the government and its leaders.

However, your actions must not lead to an uprising that threatens the government. *Almost sounds like you are justifying sedition laws. Connect to thesis*

### Symbolic Speech

Symbolic speech is another form of free speech that plays an equally important role in society. Symbolic speech is "an action that expresses an opinion or idea non-verbally.

Examples of symbolic speech are (...) burning a flag, protesting, or cross burning.

Because it involves action and not simply written or spoken words, this form of

expression is subject to more government regulation" *better to cite a specific case of symbolic speech line Texas vs. Johnson (1989)* (Wikipedia encyclopedia).

A landmark case involving symbolic speech is the Supreme Court case *Tinker v. Des*

*Moines School Dist.*, 393 U.S. 503 (1969). *OK, good*"The case involved several students who were

punished for wearing black arm-bands to protest the Vietnam War" (Wikipedia, First Amendment, Retrieved October 23, 2006). The school learned of the plan to wear armbands and passed a policy stating if any student wore an armband, they would be asked to remove it. If the student did not remove the armband, they would be suspended and not allowed to come back to school wearing the armband (Wikipedia, First Amendment). The students who wore the armbands were suspended. When the case came before the Supreme Court, the Court ruled the school could not restrict symbolic speech that did not interrupt the normal routine of school activities. Justice Abe Fortas wrote

State-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students (...) are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State (*Tinker v. Des Moines School Dist.*, 393 U. S. 503 (1969)).

| *Also, make a statement of interpretation about the quote, connect to thesis* Not all Supreme Court Justices agreed with Justice Fortas. Justice Black disagreed and said

In my view, teachers in state-controlled public schools are hired to teach there. (...) A teacher is not paid to go into school and teach subjects the State does not hire him to teach as part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders (*Tinker v. Des Moines School Dist.*, 393 U. S. 503 (1969)). *Restate what they said and put it in your own words as a connection to the thesis*

Even though the students in *Tinker v. Des Moines* did not cause a disruption in class. Justice Black argued the freedom of speech should be restricted in certain settings. Schools are for are meant to be institutions of learning. Political opinion has its place, but that place does not belong in school. As a parent, I agree with Justice Black. I send my children to school with the expectation to learn. I do not want them discussing political

agendas and getting sidetracked. *Still, as said in Tinker, do rights stop at the school house gate?*

Another case involving symbolic speech is the Supreme Court case *Texas v. Johnson*, 491 U.S. 397 (1989). *Good here it is* The case involves the burning of the American Flag. Gregory

Johnson burned an American flag as a means of protest against the Reagan administration. He was found guilty of desecrating the American Flag but his conviction was reversed (Oyez, 2006). Johnson argued his First Amendment Right, Freedom of Speech, protected burning the flag. Many people find the idea of burning the American Flag, a symbol of our Freedom, wrong. But the Court noted " if there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or

disagreeable" *right, also define and connect the term "political speech"* (Oyez, 2006). Voltaire, a famous French writer and historian said, "I

disapprove of what you say, but I will defend to the death your right to say it"

(Proverbia.net, 2006). Even if I dislike what a person is saying, they have the right to voice their opinion. Just like I have the right to say what I think. If I wanted to wear a T-Shirt with the words "I hate President Bush", my Constitutional Rights give me that

choice. *To outlaw burning of the symbol of the freedom it worse than burning the flag. The flag should not be a blindfold.*

### Obscenity

The First Amendment does not protect obscene speech. Obscene speech or obscenity can be defined as "foul, repulsive, and detestable. The term is most often used in a legal context to describe expressions (words, images, actions) that offend the prevalent sexual morality of the time" (Wikipedia encyclopedia, 2006).

One of the most famous cases involving obscenity is *Miller v. California*, 413 U.S. 15 (1973). Miller set out on a campaign to advertise the sale of adult material. California convicted Miller of violating a state statute prohibiting the distribution of obscene material (Oyez, 2006). The case was handed to the U.S. Supreme Court and they ruled, "it is constitutional to legally limit the sale, transport for personal use or other transmission of obscenity, but that it is unconstitutional to pass laws concerning the personal possession of obscenity" (Wikipedia encyclopedia, 2006). Due to the *Miller v. California* case, the Supreme Court now has a test it used to define what is obscene. It is called the Miller test and it consists of three parts. They are

- (a) Whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, (...),
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value (Miller v. California, 413 U.S. 15 (1973)). *Try and apply the test to a situation.*

As mentioned above, the Supreme Court Justices ruled it was okay to limit the sale and transport obscene material but no laws should be passed concerning a person's possession of obscene material. In a separate case, *Stanley v. Georgia*, *cite the case* Justice Thurgood

Marshall wrote, "if the First Amendment means anything, it means that a State has no business telling a man sitting in his own house what books he may read or what films he may watch" (Wikipedia encyclopedia, 2006). *Powerful words*

I agree with Justice Marshall that the State has no right to tell me what I may or may not watch and read. If I am viewing obscene material in the privacy of my own home and not selling or distributing the material, it is my constitutional right to do as I please.

Another case involving obscenity is *FCC v. Pacifica*. *YES, glad you got this one*"This case is better known as the

landmark 'seven dirty words' case. In a 1978 ruling, the Justices found that only 'repetitive and frequent' use of the words in a time or place when a minor could hear can be punished" (Wikipedia encyclopedia, 2006). *More, interpret the case, mention George Carlin*

### Conclusion

Freedom of speech is a fundamental right, guaranteed to every individual in the U.S. Freedom of speech also ensures the success of this nation. This country remains great because of the rights given to us by the First Amendment. If we were unable to speak out against our leaders and let our dissatisfaction known, our country would not be a free country. Instead, it would be a dictatorship. *Review the areas you covered in a conclusion paragraph*

I realize the importance of free speech on society. I also realize that there are some necessary restrictions placed on speech. When speech can turn violent or attempt the overthrow the government, it should be restricted. As a former Soldier, it was very disheartening to hear people talk bad about the military. But it is their right to voice their opinion. I believe in this country's fundamentals and I believe in the freedom of speech.

*Good paper, lots of personal application and interpretation as well as correct reporting*

**Grading:** the paper will be graded in the following areas applying the definitions listed

Ideas (10 poss.)	Organization (7)	Fluency (4)	Conventions (3)	Total
9	6.5	4	3.5	23

Ideas =

Connections, assessments, evaluations and your own descriptions.
The content is comprehensive, accurate, and /or persuasive.
Numerous examples from the news and one’s own life are related to the topic
A clear thesis statement is made.
A position is taken and its arguments are refuted.
The paper links theory to relevant examples.
Major points are stated clearly and are supported by specific details, examples, or analysis.

Fluency =

Ease to read
Citations are integrated to the paragraph structure.
Paper is interesting to read.
The thesis is clear throughout the paper.

Organization =

The paper develops a central theme or idea, directed toward the appropriate audience.
The introduction provides sufficient background on the topic and previews major points.
The conclusion is logical, flows from the body of the paper, and reviews the major points.
Transitions between sentences, paragraphs, and sections aid in maintaining the flow of thought.
The tone is appropriate to the content and assignment.

Conventions/Mechanics =

Citations of original works within the body of the paper follow APA guidelines where appropriate.
The paper is laid out with effective use of headings, font styles, and white space.
Rules of grammar, usage, and punctuation are followed.
Sentences are complete, clear, concise, and varied.
Spelling is correct.

## References

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